



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1996

Mr. Dan White
Hill, Gilstrap, Moorhead, White,
Bodoin & Webster
1400 West Abram Street
Arlington, Texas 76013

OR96-1943

Dear Mr. White:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101720.

The Arlington Housing Authority ("AHA") received a request for information consisting of:

1. Names, addresses and telephone numbers of any applicants for Section 8 rental assistance who were rejected such assistance because of failing to pass a criminal background check.
2. Names, addresses and telephone numbers of any persons who have been or are receiving Section 8 rental assistance and have been terminated, or are in the process of being terminated, from the rental aid program because of failing to pass a criminal background check...If addresses and/or telephone numbers are not available to directly contact these rental aid applicants or recipients, then please provide a contact person, such as a relative, if available.

You have previously provided some information to the requestor but contend that the remaining information is excepted from disclosure under section 552.101 of the Government Code. You have submitted the documents which you assert comprise the requested information.

Initially, you ask whether AHA, which was created under chapter 392 of the Local Government Code, is subject to the Open Records Act (the "act"), chapter 552 of the Government Code. The act applies to information of every governmental body. In Open Records Decision No. 268 (1981), we considered whether the Seguin Housing Authority

created under V.T.C.S. article 1269k, the statutory predecessor to chapter 392 of the Local Government Code, was a governmental body subject to the act. Noting that housing authorities "perform essential governmental functions" and the funds they collect from rentals are "public moneys," we concluded that housing authorities are governmental bodies within the meaning of the act¹ and are, therefore, subject to the act. Open Records Decision No. 268 (1981) at 1-2. *See also* Open Records Decision Nos. 382 (1983), 318 (1982), 298 (1981). Accordingly, we have ruled that housing authorities are subject to the act and, consequently, the same logic would apply to the AHA.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information must be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld on the basis of common-law privacy, if:

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and
- (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685. Although the names and addresses of individuals who occupy public housing ordinarily are not protected by common-law privacy,² what we have in the instant case is a request for the names of section 8 housing applicants or participants whom AHA established possess criminal histories. We would note that even in instances where the information involving specific individuals is sought directly from law enforcement agencies, criminal history information is not usually available. Open Records Decision No. 127 (1976) at 6.³ Consequently, information which would yield the specific identity of the applicant or participant denied Section 8 housing due to his or her criminal history must be withheld from disclosure. We have marked the documents accordingly.

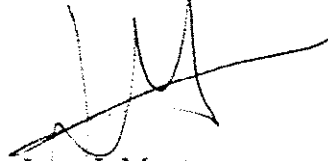
¹See Gov't Code § 552.003 (definition of governmental body).

²See Open Records Decision Nos. 318 (1982), 268 (1981)

³In *Houston Chronicle Publishing Co. V. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court determined that the release of records primarily containing criminal histories, such as previous arrests would constitute an unwarranted invasion of privacy interests. *Id.* at 188. Additionally, we would note that the privacy interest in criminal history information has been recognized by federal regulations which limit access to criminal history record information which states obtain from the federal government or other states. *See* 28 C.F.R. § 20; *see also United States Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989) (finding criminal history information protected from disclosure under Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552a). Recognition of this privacy interest has been echoed in open records decisions issued by this office. *See* Open Records Decision Nos. 616 (1993), 565 (1990), 216 (1978), 183 (1978), 144 (1976), 127 (1976).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a long horizontal stroke extending to the right.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/ro

Ref. ID# 101720

Enclosures: Marked documents

cc: Mr. Lawrence C. Sutherland
901 Mill Lake Drive #242
Arlington, Texas 76006
(w/o enclosures)